Supreme Court, U.S.
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No. 93-1560

In the Supreme Court of the United States

OCTOBER TERM, 1993

MAURICE R. HUFF AND NANCY R. HUFF, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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3 pp

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The judgment of the court of appeals was entered on November 26, 1993 (Pet. App. 16). An untimely petition for rehearing was filed 17 days later, on December 13, 1993.* The petition for rehearing was denied on January 6, 1994, without any indication that the court of appeals had considered it on its merits (Pet. App. 37). The petition for a writ of certiorari was filed on April 4, 1994, more than 90 days after November 26, 1993.

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* Rule 40 of the Federal Rules of Appellate Procedure requires that a petition for rehearing be filed within 14 days of the entry of the order of the court of appeals. No order or local rule enlarged the time for filing the petition for rehearing in this case. See also F.R.A.P. 25(a).

"Title 28 U.S.C. § 2101(c) requires that a petition for certiorari in a civil case be filed within 90 days of the entry of the judgment below. This 90-day limit is mandatory and jurisdictional." *Missouri* v. *Jenkins*, 495 U.S. 33, 45 (1990). The petition for a writ of certiorari should therefore be denied.

Respectfully submitted.

DREW S. DAYS, III
Solicitor General

MAY 1994